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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case Nos. 08-13555 (JMP) ; 08-01420 (JMP) (SIPA)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.  
Debtors.

- - - - -x

In the Matter of:

LEHMAN BROTHERS INC.  
Debtor.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

October 20, 2010  
2:02 PM

B E F O R E:  
HON. JAMES M. PECK  
U.S. BANKRUPTCY JUDGE

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HEARING re Turnberry et al v. LBHI [Adv. Case No. 09-01062]

Pretrial Conference

HEARING re Lehman Brothers Holdings Inc. v. J. Soffer,  
Fontainebleau Resorts, LLC [Case No. 10-02821]

Pretrial Conference

HEARING re Lehman Brothers Holdings Inc. v. J. Soffer,  
Fontainebleau Resorts, LLC [Case No. 10-02823]

Pretrial Conference

Transcribed by: Lisa Bar-Leib

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17 (TELEPHONICALLY)

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## P R O C E E D I N G S

THE COURT: Be seated, please. These are the pretrials, right? Who are you?

MR. BERGMAN: That's correct. Good afternoon, Jed Bergman of Kasowitz, Benson, Torres and Friedman for the plaintiffs in the Turnberry matter that's number 11 on the agenda --

THE COURT: Okay.

MR. BERGMAN: -- as well as for the defendants that are in numbers 12 and 13. But my co-counsel Dennis Richard is, I believe, holding on the phone for Your Honor.

THE COURT: Okay. Turnberry and the Fontainebleau --

MR. AZER: I'm sorry, Your Honor. My name is Adrian Azer from Milbank Tweed on behalf of the official committee.

THE COURT: Okay. Turnberry and the Fontainebleau appear to be sort of in a holding pattern today because I note that are motions to dismiss schedule for December 15th.

MR. BERGMAN: that's correct.

THE COURT: Why are we here?

MR. BERGMAN: I believe that counsel for the debtors is also on the phone and he could probably answer that as well.

THE COURT: Okay. I'm just wondering what we're going to accomplish in October that will affect what's clearly already a motion for December.

MR. MCCARTHY: Your Honor, this is Ed McCarthy. I'm

1 here with my colleague Ed Soto on behalf of Lehman.

2 THE COURT: Okay.

3 MR. MCCARTHY: I mean, we -- you're correct that the  
4 motions to dismiss in both actions were adjourned. We wanted  
5 to move forward with the pretrial conference here because this  
6 is the first pretrial conference in these adversary  
7 proceedings.

8 And the parties have been working amicably together  
9 thus far, which they've indicated -- continue. But at this  
10 point, we believe the litigation's all ready to move forward  
11 with discovery and continue motion practice including  
12 additional dispositive motion practice. So we wanted to get  
13 this first pretrial conference under way so that we could move  
14 forward with that discovery.

15 THE COURT: Are the cases linked in any way or is it  
16 simply the fact that they're being listed for pretrial on the  
17 same day and we have motions to dismiss listed on the same day?

18 MR. MCCARTHY: Your Honor, in these cases -- this is  
19 Ed McCarthy. These cases are interrelated. Certainly number  
20 twelve and thirteen, the two Fontainebleau cases, are very much  
21 interrelated with the same parties, same agreements  
22 controlling. One is just a senior loan, the other one is a  
23 mezz loan.

24 The counsel for Turnberry case, number 11 on your  
25 agenda, is also very much interrelated to the other two, with

1 the same counsel and very similar parties. For that reason,  
2 we've discussed this, not at length, but have discussed it with  
3 opposing parties that discovery moving forward, the request --  
4 and certainly depositions as we go forward, can be  
5 consolidated, can be linked. And we think that, working  
6 together with the parties, we'll be able to accomplish that.

7 THE COURT: Does everybody agree?

8 MR. MCCARTHY: We do, Your Honor, yes. Yes, Your  
9 Honor.

10 MR. BERGMAN: Yes, Your Honor.

11 MR. RICHARD: This is Dennis Richard.

12 THE COURT: Mr. Richard, who are you representing?

13 MR. RICHARD: We're substituting as counsel for  
14 Jeffrey Soffer and have already been pro hac vice-ed in, in  
15 case number 21 -- 2821 and 2823 and for all the plaintiffs in  
16 case number 01062.

17 THE COURT: Okay. So, if I'm understanding this  
18 correctly, these are not cases that would ordinarily be proper  
19 with the subject of a consolidation because they involve  
20 different parties and different aspects of the transaction.  
21 But they're sufficiently connected, it makes sense to  
22 coordinate pretrial practice and discovery.

23 Do I have that right?

24 MR. MCCARTHY: Your Honor, this is Ed McCarthy.  
25 That's absolutely correct.

1 THE COURT: Okay.

2 MR. RICHARD: However, Your Honor -- this is Dennis  
3 Richard. We do plan move to consolidate all three cases when  
4 we proceed and to amend pleadings as we come in because we  
5 believe that the defenses are the same and they're all being  
6 tried as bench trials before the same Court. And the claims  
7 all turn on a common (indiscernible) facts. We haven't done  
8 that yet; we're only coming in now.

9 THE COURT: All right. And this all relates to real  
10 estate development in Las Vegas, all the different projects?

11 MR. MCCARTHY: Your Honor, this is Ed McCarthy.  
12 That's right. It does relate to two separate projects in Las  
13 Vegas, the Fontainebleau Las Vegas project and then a shopping  
14 mall retail facility, the Town Square project in Las Vegas on  
15 the Las Vegas strip.

16 So, separate projects but the same parties, similar  
17 witnesses and separate loan agreements. The loan documents  
18 that control the relationships here between the parties are  
19 separate with (indiscernible) on the Fontainebleau side with  
20 the mezzanine loan documents and the senior loan documents.

21 And certainly the loan document on the Turnberry Town  
22 Square case is a separate loan document that controls --

23 THE COURT: Okay.

24 MR. MCCARTHY: -- so while moving forward with  
25 consolidation for pretrial discovery makes a lot of sense to

1 us, we're not sure on the full substantive consolidation at  
2 this point for the trial. We have to work with opposing  
3 counsel a little bit further and see exactly what they're  
4 thinking for that.

5 THE COURT: All right. Well, there seems to be  
6 general agreement on the part of counsel regardless of what  
7 case you're in that it makes sense to coordinate discovery.  
8 And let me just ask if any work has been done other than  
9 stating that the concept is a desirable one to begin to  
10 coordinate discovery and to develop a pretrial order?

11 Silence suggests to me that you haven't done anything  
12 yet.

13 MR. BERGMAN: Not yet.

14 MR. MCCARTHY: Your Honor, this is Ed McCarthy. On --  
15 internally we certainly have and we had discussions originally  
16 with Mr. Bergman and it's been limited with Mr. Richard, now  
17 that he's come in just because of the short time period. But  
18 we will certainly continue those.

19 But, internally, we have certainly made efforts to  
20 collect documents, see what it will take to do a full  
21 production and review for these cases and --

22 THE COURT: Okay.

23 MR. MCCARTHY: -- we will continue those efforts.

24 THE COURT: Well, everybody will reserve rights, I  
25 suppose, on the issue of consolidation. It seems to me that

1       there's no disagreement that coordination in terms of discovery  
2       is not only sensible, but everybody agrees to it.

3               So, my suggestion is that between now and certainly  
4       when next we're together, which I don't think will be any  
5       earlier than mid-December, unless there's special reason for us  
6       to be together, that the parties develop a form of pretrial  
7       order, either separate pretrial orders in each of the adversary  
8       proceedings that reference one another and that are coordinated  
9       or a single one under the same caption. I'm indifferent as to  
10      which you choose to do at this point. And I'm assuming that  
11      the parties will also engage in substantive discovery between  
12      now and December 15th.

13             What I'm going to propose is that we have one  
14      announced to a follow-up pretrial on December 15 as well as  
15      arguments in connection with the pending motions to dismiss,  
16      just so I know what the status is. I'm not going to  
17      micromanage the timing for the completion of the pretrial  
18      orders. I just assume the parties will act responsibly and get  
19      that done. And if they're submitted on consent, I can simply  
20      so order them.

21             If there's a problem, you can always contact chambers  
22      and schedule a telephone conference.

23             MR. MCCARTHY: Your Honor, the -- this is Ed McCarthy.  
24      The only other thing that -- that sounds absolutely to what we  
25      were thinking.

1           The only other thing we do want to address is we plan  
2           to file letters with your court under the local rules asking  
3           for a conference so that the Court can give us advice with  
4           respect to proposed summary judgment, and as one document is  
5           controlling the relationships with integration clauses and that  
6           this is something that the Court can determine on its summary  
7           judgment.

8           If it makes sense that the Court hold that conference  
9           on December 15th, we can send a letter --

10          THE COURT: That's fine. If you've -- excuse me. If  
11          you feel that there's some timing imperative and that there's a  
12          need to do that sooner rather than later, we can schedule a  
13          telephone conference for that purpose earlier than the 15th of  
14          December. But if there's no urgency to it and if it's going to  
15          take some time to go through that process including the need to  
16          complete discovery, then maybe doing it on the 15th of December  
17          works.

18          What do you think about timing?

19          MR. MCCARTHY: I think the 15th of December will work,  
20          Your Honor. We've --

21          THE COURT: Fine.

22          MR. MCCARTHY: -- been getting into discovery a bit.  
23          What will be helpful here, I don't know that we'll need to  
24          bring it to completion in order to file and complete with  
25          briefs these motions, but the 15th should work perfect.

1 THE COURT: Okay. My suggestion then is for  
2 docketing purposes that you note -- I suppose with Weil Gotshal  
3 as the record keeper that the hearing on 12/15 in these matters  
4 in addition to and including and continued pretrial conference  
5 in each case and motions to dismiss being argued as previously  
6 noticed and that there be a conference in connection with a to-  
7 be-submitted letters relating to summary judgment practice.

8 Anything more for today?

9 MR. MCCARTHY: This is Ed McCarthy, Your Honor.  
10 Nothing else from us.

11 THE COURT: Okay.

12 MR. RICHARD: This is Dennis Richard. We have nothing  
13 else, Your Honor.

14 THE COURT: Okay. I think we're -- that's very  
15 efficient; we did three at one time and we did it in ten  
16 minutes. We are adjourned, then. I think there's nothing more  
17 for the --

18 (Whereupon these proceedings were concluded at 2:11 p.m.)  
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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

\_\_\_\_\_  
LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET\*\*D-486)

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Date: October 21, 2010